



Jurisdictional Policy Advice No. 2009/6
Safety, Rehabilitation and Compensation Act 1988
Same-sex relationships
Effective from 10 December 2008

Background

1. The *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008* (Same-Sex Act) was passed on 27 November 2008 and received Royal Assent on 9 December 2008; consequently its provisions in relation to the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) commenced on and from Wednesday 10 December 2008.
2. The Same-Sex Act removes discrimination against same-sex couples, their dependants and their dependent children from a wide range of Commonwealth laws and programs including the SRC Act.
3. The SRC Act previously recognised ‘dependant’ status in relation to a deceased employee to include married couples and opposite sex couples in bona fide domestic relationships (i.e de facto). The Same-Sex Act extends recognition to de facto and registered relationships of de facto couples of the same sex. This is to ensure that same-sex couples, their dependent children and other dependants receive the same entitlements as married or de facto opposite-sex couples and their dependants.
4. These amendments do not change the definition of “prescribed child”. They do, however, expand the circumstances in which a person can be considered to be a child of an employee for the purposes of the SRC Act.

Policy Advice

5. Sections 4, 19 and 29 of the SRC Act have been amended by the addition of new definitions of relationships and the amendments of existing definitions as provided in the attached table. The *Family Law Act 1975* definition of “child” is now included in the SRC Act.

Legislation

Compensation for injuries resulting in death

6. The amendments affect the section 4 definitions of “dependant” and “spouse” and widen the eligibility provisions for the lump sum death benefit under section 17 – ‘Compensation for injuries resulting in death’ for any claims where the date of death is on or after 10 December 2008 and where the deceased was in a same-sex relationship. This means that no lump sums can be payable to dependants of same-sex couples where the death preceded the 10 December 2008 commencement date.
7. The amendments also introduced eligibility for weekly benefits payable on or after 10 December 2008 irrespective of the date of death or injury of the employee for those prescribed children of a relationship who previously were not entitled to death benefits.

Compensation for injuries resulting in incapacity

8. The changes to the definition of “child” in the *Family Law Act 1975* mean that children whose relationship with the employee prior to 10 December 2008 did not attract an additional payment under subsection 19(9) may now do so.

9. Two amendments have also been made to section 19. Subparagraph 19(12)(b)(1) has been amended consistent with the changes to the definition of 'dependant'. Subsection 19(13) has been repealed, because it has been replaced by the new tracing rule in subsection 4(2). These amendments apply on and from 10 December 2008 to any person now included in the definition of "prescribed person" under subsection 19(12) and determining authorities should review applicability.
10. As the majority of these changes relate to death claims, regard must be had to JPA 2009/7 on the increase of section 17 benefits from 13 May 2008 and to JPA 2009/8 on section 13 increases to benefits from 1 July 2009.
11. For enquiries concerning this policy advice, please contact the SRC Policy Section by telephone on 1300 366 979, or by email at SRC.Policy@comcare.gov.au.
12. Please contact SRC Policy Section if requiring assistance in defining dependants or prescribed children in complex situations such as non-registered same sex spouses; step children; or children / step-children who had not been residing with the employee at the time of death; entitlements for children conceived by artificial means and born after the date of death of the employee, etc.

Alex O'Shea
Acting General Manager
Research and Policy Branch
5 June 2009

**Amendments to the Safety, Rehabilitation and Compensation Act 1988 as a consequence of the
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008**

Section	Action	Amendment	Explanation of the amendment
4(1)	New definition inserted	child : without limiting who is a child of a person for the purposes of this Act, someone is the child of a person if he or she is a child of the person within the meaning of the <i>Family Law Act 1975</i> .	Along with the new definition of 'step-child', the definition of 'child' extends the classes of children who can be considered as the child of a person for the purposes of the SRC Act. A child is now considered to be a person's child where that child was the 'product of the relationship' the person has or had as a couple with another person. The intention is to ensure that children of same-sex couples are recognised by the SRC Act.
		de facto partner of a person has the meaning given by the <i>Acts Interpretation Act 1901</i> .	The definition of 'de facto partner' extends the range of persons who can be considered to be the spouse of a person for the purposes of the SRC Act. As 'partner' is gender neutral it encompasses members of both same-sex and opposite-sex relationships. Section 22A of the <i>Acts Interpretation Act</i> prescribes 2 different circumstances in which a person is considered to be the de facto partner of another person: if they are in a "registered relationship" (paragraph 22A(a)) or if they are in a 'de facto relationship' (paragraph 22A(b)).
		parent : without limiting who is a parent of a person for the purposes of this Act, someone is the parent of a person if the person is his or her child because of the definition of child in this section.	Along with the new definition of 'step-parent', the definition of 'parent' extends the range of persons who can be considered to be the parent of a child for the purposes of the SRC Act. The intention is to ensure that in certain circumstances the same-sex partner of a parent could also be recognised as a 'parent' for the purposes of the SRC Act.
		stepchild : without limiting who is a stepchild of a person for the purposes of this Act, someone who is a child of a de facto partner of the person is the stepchild of the person if he or she would be the person's stepchild except that the person is not legally married to the partner.	This extends the range of persons who can be considered to be a 'stepchild' to ensure that stepchildren of both opposite-sex and same-sex de facto relationships are recognised in the same way as stepchildren of married couples are currently recognised for the purposes of the SRC Act.
		step-parent : without limiting who is a step-parent of a person for the purposes of this Act, someone who is a de facto partner of a parent of the person is the step-parent of the person if he or she would be the person's step-parent except that he or she is not legally married to the person's parent.	This ensures that step-parents of children of both opposite-sex and same-sex de facto relationships are recognised in the same way as the stepchildren of married couples are currently recognised for the purposes of the SRC Act.
		Amendment	
Paragraph (a) of the definition of dependant : the spouse, parent, step-parent, father-in-law, mother-in-law, grandparent, child, stepchild, grandchild, sibling or half-sibling	'dependant' has been re-defined to be consistent with the same-sex legislation. Gender specific language has been replaced with gender neutral language (except for 'father-in-law' and 'mother-in-law').		
Paragraph (a) of the definition of spouse :(a) in relation to an employee or a deceased employee--a person who is, or immediately before the employee's death was, a de facto partner of the employee; and	'spouse' has been re-defined to be consistent with the same-sex legislation. It now includes (in relation to an employee or deceased employee) a de facto partner of the employee whether of the same or opposite sex to the employee. Where the relationship is not registered, the previous requirement that a spouse be living with the		

Section	Action	Amendment	Explanation of the amendment
4(2)	Amendment	<p>(2) For the purposes of this Act, relationships (including the relationship of being family or being relatives) are taken to include (without limitation):</p> <p>(a) relationships between de facto partners; and</p> <p>(b) relationships of child and parent that arise:</p> <p>(i) if someone is an exnuptial or adoptive child of a person; or</p> <p>(ii) because of the definitions of child and parent in this section; and</p> <p>(c) relationships traced through relationships referred to in paragraphs (a) and (b)</p>	<p>employee is now contained in the definition of 'de facto partner'.</p> <p>The newly amended subsection 4(2) cross-references to the definition of 'dependant' and other related terms in the Act. It allows relationships referred to in the SRC Act to include those between de facto partners or relationships of parent and child that arise because of adoption, the definitions of 'parent' and 'child' and ex-nuptial relationships. It also includes a tracing rule* that allows relationships traced through adoption, the definitions of 'parent' and 'child' and ex-nuptial relationships to be recognised for the purposes of the SRC Act.</p>
4(6)	Amendment	<p>(6) For the purposes of this Act, other than subsection 17(5), a child of a deceased employee who was born alive after the employee's death shall be treated as if he or she had been born immediately before the employee's death and was wholly dependent upon the employee at the date of the employee's death.</p>	<p>Gender specific language has been replaced with gender neutral language ('son or daughter' have been relaced with 'child').</p>
19(12)(b)(i)	Amendment to "prescribed person"	<p>(i) the parent, step-parent, father-in-law, mother-in-law, grandparent, child, stepchild, grandchild, sibling or half-sibling of the employee;</p>	<p>Gender specific language has been replaced with gender neutral language ('son' and 'daughter' have been relaced with 'child', 'father' and 'mother' have been replaced with 'parent', 'step-father ' and 'step-mother' have been replaced with 'step-parent', 'grandfather' and 'grandmother' have been replaced with 'grandparent', 'step-son' and 'step-daughter' have been replaced with 'stepchild', 'grandson' and 'granddaughter' have been replaced with 'grandchild', 'brother' and 'sister' have been replaced with 'sibling' and 'half-brother' and 'half-sister' have been replaced with 'half-sibling').</p>
19(12)	At the end of subsection	<p>Note: In relation to subparagraph (12)(b)(i), see also subsection 4(2).</p>	<p>This cross-references the definition of 'prescribed person' to the newly amended subsection 4(2). It directs the reader to the tracing rule* (see above) contained in subsection 4(2), which is relevant to subparagraph 19(12)(b)(i).</p>
19(13)		Repealed	<p>Subsection 19(13) was made unnecessary by the other amendments.</p>
29(2)	At the end of subsection	<p>Note: In relation to paragraph (2)(d), see also subsection 4(2).</p>	<p>This cross-references the household services provisions to the newly amended subsection 4(2). It directs the reader to the tracing rule* (see above) contained in subsection 4(2), which is relevant to paragraph 29(2)(d).</p>
29(4)		<p>Note: In relation to paragraph (4)(f), see also subsection 4(2).</p>	<p>This cross-references the attendant care services provisions to the newly amended subsection 4(2). It directs the reader to the tracing rule* (see above) contained in subsection 4(2), which is relevant to paragraph 29(4)(f).</p>